

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

WQ
80-2

In the Matter of the Petition of)
the City of Pacific Grove for)
Review of Order No. 79-68 (NPDES)
Permit No. CA0048178), California)
Regional Water Quality Control)
Board, Central Coast Region. Our)
File No. A-243.)

Order No. ^{WQ} 80-2

BY THE BOARD:

The Monterey Regional County Sanitation District (District) owns and operates a two million gallon per day (mgd) primary treatment plant and disposal facility at Pacific Grove, California. Treated wastewater is discharged to the Pacific Ocean from Point Pinos. The discharge has been subject to waste discharge requirements since 1974. The City of Pacific Grove (petitioner) owns and maintains the sewer system collecting and transporting the petitioner's wastewater to the District's waste treatment plant.

Since the original requirements were about to expire, on June 8, 1979, the California Regional Water Quality Control Board, Central Coast Region, (Regional Board) adopted Order No. 79-68 (NPDES Permit No. CA0048178) for the District and the petitioner. The order places requirements on the discharge of waste to the Pacific Ocean. In addition, provision D.11 of the order provides that "[t]he City shall implement and enforce a source control program approved by the Executive Officer." This provision was adopted in anticipation of the need to implement a statewide federally approved pretreatment program. (For the purposes of this order, the phrases "source control program" and

"pretreatment program" may be read as equivalent expressions.)
The order also prohibits the discharge or bypassing of untreated wastes to surface waters by the petitioner. (Prohibition A.2.)

The Regional Board order expires July 1, 1980. The reason for the short time period is that by that date it is expected that the discharge will cease because of the completion of an interceptor that will transport the wastes to another treatment facility. Completion of the interceptor will result in abandonment of the treatment plant and outfall which is the subject of Regional Board Order No. 79-68. Over the short-term Pacific Grove's wastewater will be treated in a facility operated by the District at the City of Monterey. Eventually the use of this plant will also be discontinued when a regional treatment facility is completed. This regional facility, known as the Northern Monterey County Regional Wastewater Treatment Plant, will serve the residents of Pacific Grove, Monterey, Seaside, Sand City, Del Rey Oaks, Marina, Salinas, Castroville, Moss Landing, and Fort Ord. Its completion will result in several individual plants being taken out of service.

On June 27, 1979, the State Board received the petition for review of the Regional Board's order.

I. CONTENTIONS AND FINDINGS

1. Contention: The petitioner contends it should not be subject to the order, since the District is the sole entity making the discharges which are regulated by the order.

Findings: Petitioner submits that since it has no control over the treatment process it should not be responsible for complying with waste discharge requirements. Since the plant is owned and operated by the District, petitioner believes that the permit should be in the sole name of the District.

It is true that the Porter-Cologne Act excludes discharges to a community sewer system from regulation by waste discharge requirements (Water Code §13263). In Water Quality Order No. 78-8, we reviewed the legislative history of this provision. We concluded that it was enacted to ensure that the public entity with jurisdiction over discharges contributed to its system would have prime responsibility for the proper disposal of the wastes. In this connection it is noted that the District is not empowered, currently, to regulate industrial pollutants discharged into the petitioner's collection system.

Thus, to the extent the petitioner retains exclusive power over the entry of pollutants into its waste collection system which are conveyed to the District's treatment plant, the petitioner should be held accountable for any actions necessary to protect the treatment plant's operation, the environment and to assure compliance with federal law. Naming the petitioner in the permit assures such accountability. As was stated by the Regional Board's Executive Officer in his August 1, 1974, response to the petition, "[t]he City was included as a responsible party in the order for two purposes only, to control bypasses from its collection system and to establish and enforce a source control

program". Applicability of the permit as to petitioner is thus limited to these areas of responsibility and should be construed accordingly.

Petitioner also submits that it should not have been named in the order since the permit does not purport to regulate input to its collection system. However, as indicated by the Regional Board, there are provisions in the permit to control bypasses from petitioner's collection system and to establish and enforce a source control program.

Further support for the position that agencies responsible for conveyance systems leading to a treatment facility can be named in an NPDES permit is found in actions of the Environmental Protection Agency (EPA). For example, an NPDES permit for a separate storm sewer discharge has been construed to cover all conveyances which are part of that separate storm sewer system, even though there may be several owners-operators of such conveyances (44 Federal Register 32914). By analogy, a permit for a publicly owned treatment works (POTW) should cover all conveyances which are part of the entire disposal system.

In addition, EPA has stated that although discharges through privately owned treatment systems are direct discharges this should not result in the issuance of many permits for a single discharge point (44 Federal Register 32857). To avoid the administrative problems caused by multiple permits, EPA recommends the issuance of a single permit to all users as well as the treatment facility itself. In our case, it appears entirely within a Regional Board's authority to issue a single permit to all

persons responsible for the disposal of wastes. This includes persons responsible for the conveyance of pollutants to a treatment facility as well as persons responsible for the treatment operation itself.

2. Contention: The petitioner contends that provision D.11 is inappropriate because there is no existing source control program to implement or enforce.

Findings: It should be noted, by way of background, that a source control program includes measures aimed at establishing control over the entry of non-domestic wastes into a POTW. Source control programs may be required for reasons which include the following:

1. To prevent the entry of pollutants into a POTW that would be incompatible or interfere with the operation of the POTW;

2. To prevent the entry of pollutants into a POTW that would pass through the treatment works into the receiving waters; and

3. To prevent contamination of wastewaters and sludge in order to improve opportunities to recycle treated wastewater and sludge.

Applicable state regulations provide:

"(f) A condition shall be included for a publicly owned treatment works treating, or designed to treat, an average dry weather flow of 5 mgd or more of community wastewater that the operating entity shall have and enforce an adequate

source control program approved by the appropriate regional board. In determining the adequacy of the source control program, the regional board shall be guided by the State Water Resources Control Board's 'Guidelines for Determining the Effectiveness of Local Source Control Programs', unless either the state board or regional board specifically excludes an operating entity by making a finding that a source control program would not serve to minimize the discharge of toxic or hazardous substances. Such a condition may be included for a publicly owned treatment works treating or designed to treat an average dry weather flow of less than 5 mgd or community wastewater where deemed appropriate by the state board or regional board.

"(g) In cases where an operating entity does not have an adequate source control program, a time schedule shall be included with the waste discharge requirements for adoption and implementation of the necessary program." (Cal. Admin. Code, Title 23, Chapter 3, Subchapter 6, §2233.6.)

These requirements are consistent with federal regulations contained in Title 40, Code of Federal Regulations, Part 403, issued on June 7, 1978. These regulations require municipalities to develop pretreatment programs. The implementation of such programs is to be mandated through conditions in NPDES permits and conditions in construction grant contracts. For example, under current grant regulations grantees must have approved pretreatment programs to receive full grant payments. Included in the federal regulations is the requirement that larger POTWs develop a locally run pretreatment program to ensure that non-domestic users of a municipal system comply with applicable pretreatment requirements. The development of such programs is fundable through Section 201 construction grants.

As noted earlier, the Pacific Grove waste treatment plant's capacity is two mgd. Thus, the regulations do not mandate the establishment of a source control program through a condition in the permit which is the subject of the petition. Clear water quality considerations should be present before applying this regulation through permits issued to plants with flows of less than five mgd. In this regard, the record does not disclose any evidence tending to indicate there is a compelling need to impose a source control program on the petitioner at this time in order to protect the environment or the operations of the treatment plant. However, when the Point Pinos waste treatment plant and outfall are abandoned later this year, the petitioner's waste will be treated in a plant well over five mgd. At that time the petitioner will become subject, clearly, to the foregoing regulations. Under such circumstances we conclude that the Regional Board is empowered to impose pretreatment requirements on petitioner. However, we feel that the appropriate vehicle for such a requirement is the NPDES permit for the regional system rather than the soon-to-expire permit on the Pacific Grove facility. In this connection we note that an NPDES permit for the regional facility was issued in September 1978. It contains the following pretreatment requirement:

"The discharger shall enact a source control ordinance in accordance with the State Water Resources Control Board's 'Guidelines for Determining Effectiveness of Local Source Control Programs'. Said

ordinance shall outline the obligations of each discharger using the sewerage system. A source control study shall be completed in ample time to notify contributing dischargers of their obligations."

Subsequent to the adoption of this permit, the State Board has furnished additional guidance to the Regional Boards on the implementation of a pretreatment program.^{1/} At that time it was indicated that the NPDES permit standard pretreatment requirements should be added to all waste discharge requirements where a pretreatment program is required. This further guidance should be incorporated through revision of the permit to the regional facility. When such revision is made, the regional board has the authority to make pretreatment program requirements directly applicable to all agencies responsible for conveyance systems leading to the regional system. If the District in the future assumes responsibility for the conveyance systems, the permit can be modified accordingly.

II. ADDITIONAL CONTENTIONS

The petitioner puts forth additional reasons why it believes provision 11 is inappropriate. the contentions will not be set forth and discussed herein, because it has been concluded that a pretreatment provision should be included in the NPDES permit for the regional facility.

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1. July 20, 1979, memorandum from Larry F. Walker to Regional Board Executive Officers entitled, "Implementation of a Pretreatment Program".

III. CONCLUSIONS

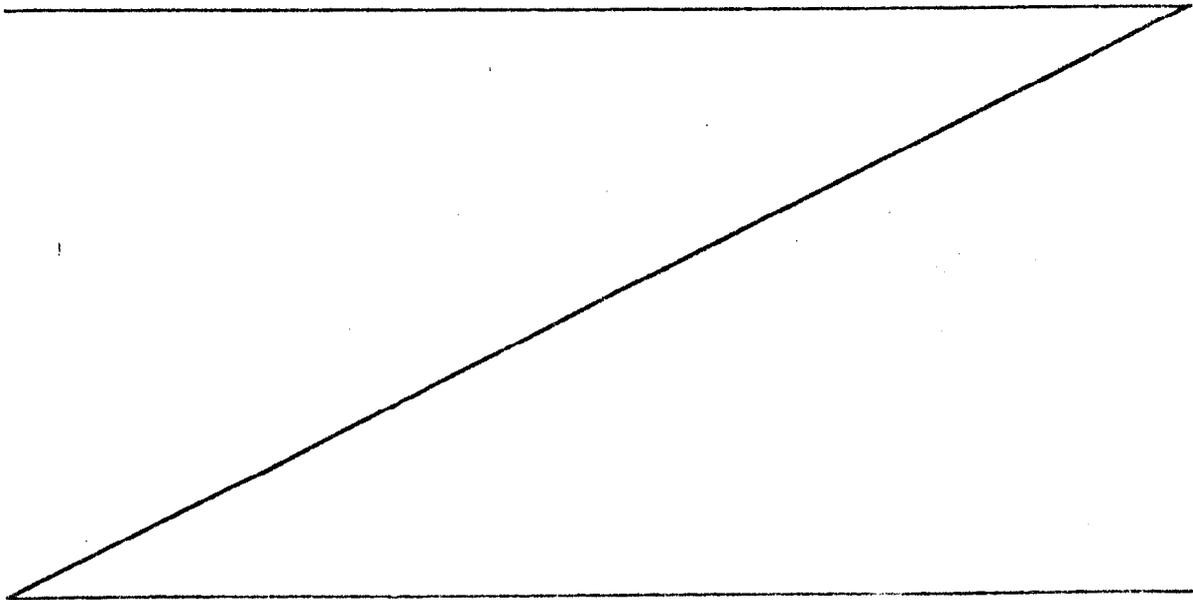
For the reasons discussed herein, we conclude as follows:

1. That pretreatment program requirements for petitioner should be included in the NPDES permit for the regional facility rather than the permit for the Pacific Grove facility.

2. That the Regional Board has the authority to impose pretreatment program requirements on petitioner at such time as the permit for the regional facility is revised.

3. That pretreatment requirements should be consistent with recent State Board guidance.

4. That Order No. 79-68 is in all other respects properly imposed on petitioner.



IV. ORDER

IT IS, THEREFORE, ORDERED that Order No. 79-68 of this matter be remanded to the Regional Board for action consistent with this order.

Dated: February 21, 1980

/s/ Carla M. Bard
Carla M. Bard, Chairwoman

/s/ William J. Miller
William J. Miller, Vice Chairman

/s/ L. L. Mitchell
L. L. Mitchell, Member

/s/ Jill B. Dunlap
Jill B. Dunlap, Member

/s/ F. K. Aljibury
F. K. Aljibury, Member